AFTER SYRIA:

THE FUTURE OF THE RESPONSIBILITY TO PROTECT

2014 S.T. Lee Lecture by Professor the Hon Gareth Evans AC QC FASSA, Chancellor of The Australian National University, Co-Chair of the International Commission on Intervention and State Sovereignty and Global Centre for the Responsibility to Protect, Institute for Advanced Study, Princeton, 12 March 2014

Being an optimist about international relations is a hazardous trade. The world keeps on letting you down. One might have thought, for example, that with the Cold War age of realpolitik long behind us, crude territorial grabs backed by the assertion of military power – based on spurious claims to be protecting one's own language speakers, and in defiance of every principle of the international order playbook – would be unthinkable. But Russia's behaviour in Ukraine has just shown any such confidence to be wholly misplaced.

One might, again, have thought it inconceivable, not least with the air in East Asia now crackling with tension, that anyone in Japan could be indifferent enough to the evidence of history, and insensitive and provocative enough, to suggest to its neighbours that it had nothing for which to apologize in its waging of aggressive war, and perpetration of wartime atrocities, in the past. But Prime Minister Shinzo Abe and his colleagues in government have done just that, with their questioning yet again of national responsibility for the enslavement of "comfort women", and recent visits to the Yasukuni Shrine, nurturing as it does the souls of war criminals and harbouring in its grounds, as it does, the Yushukan Museum, defending and glorifying Japan's military behaviour in the 1930s and '40s.

And, to take another example, the most harrowing of all, and going to the heart of the subject of this lecture, one might have optimistically thought after the UN Security Council authorised the use of military force to protect civilians from threatened massacre in Libya in 2011 – acting in specific reliance on the new principle of 'the responsibility to protect', and in a way that, had it been matched for speed and decisiveness twenty years ago, would have saved the lives of 8,000 in Srebrenica and up to 800,000 in Rwanda – that we might really at last be on our way to ridding the world once and for all of mass atrocity crimes.

But now we have to ask ourselves whether or not *that* piece of optimism has not also been completely misconceived, as we look out at the shame and horror of Syria: with 130,000 dead after nearly three years of conflict; with half the country's population displaced within and beyond its borders, many of them in the direst humanitarian need; and with atrocity crimes – some now from the rebel side, but still overwhelmingly from the governing regime – almost a daily occurrence

The story I want to tell you about the emergence and evolution of the responsibility to protect is not a uniformly happy one. It grew out of despair; it generated hope; it produced, with Libya, a moment of real exhilaration; and in the aftermath of Syria, it has led to a real sense of disappointment. But the story of the responsibility to protect – or "R2P" as it's now, for better or worse, commonly abbreviated – is not one of a return to despair. For a series of reasons that I will spell out there are strong grounds for continuing to hope that, when it

comes to mass atrocity crimes, we will *not* be condemned repeat forever the cry of "never again".

But let me begin at the beginning. To understand how important an innovation the new R2P doctrine has been, we need to understand where we were before it was born. And to evaluate how serious a setback to the consolidation and evolution of the new norm Syria has been, we need to be very clear about what precisely were its intended scope and limits.

The Origins and Development of R2P. The emergence of the responsibility to protect doctrine was a response to a very real and age-old international problem: the continuing inability of the international community to effectively prevent or halt mass atrocity crimes – viz. genocide, ethnic cleansing and other major crimes against humanity and war crimes – occurring behind sovereign state borders.

What is in some ways hardest to believe is how little changed in the decades after World War II. One might have thought that Hitler's atrocities within Germany and in the states under Nazi occupation would have laid to rest once and for all the notion – predominant in international law and practice since the emergence of modern nation states in the 17th century – that what happens within state borders is nobody else's business: to put it starkly, that sovereignty is essentially a license to kill.

But even with all the developments in international human rights law and international humanitarian law which followed the War – even with the Nuremberg Tribunal Charter and its recognition of "crimes against humanity" which could be committed by a government against its own people; even with the recognition of individual and group rights in the UN Charter, and more grandly in the Universal Declaration of Human Rights and the subsequent International Covenants; even with the new Geneva Conventions taking forward international humanitarian law on the protection of civilians; and even after the Genocide Convention signed in 1948 – aimed at preventing and punishing the worst of all crimes against humanity, attempting to destroy whole groups simply on the basis of their race, ethnicity, religion or nationality – the killing still went on.

Why didn't things fundamentally change? Essentially because the overwhelming preoccupation of those who founded the UN was not in fact human rights but the problem of states waging aggressive war against each other. What actually captured the mood of the time, and that which prevailed right through the Cold War years, was, more than any of the human rights provisions, Article 2(7) of the UN Charter: "Nothing should authorize intervention in matters essentially within the domestic jurisdiction of any State".

The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were just not the rest of the world's business was dominant throughout the UN's first half-century of existence: Vietnam's invasion of Cambodia in 1978, which stopped the Khmer Rouge in its tracks, was universally attacked as a violation of state sovereignty, not applauded. And Tanzania had to justify its overthrow of Uganda's Idi Amin in 1979 by invoking "self-defence", not any larger human rights justification. The same had been true of India's intervention in East Pakistan in 1971.

With the arrival of the 1990s, and the end of the Cold War, the prevailing complacent assumptions about non-intervention did at last come under challenge as never before. The

quintessential peace and security problem – before 9/11 came along to change the focus to terrorism – became not interstate war, but civil war and internal violence perpetrated on a massive scale. With the break-up of various Cold War state structures, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose, above all in the former Yugoslavia and in Africa.

But old habits of non-intervention died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counter-productively, as in the debacle of Somalia in 1993, the catastrophe of Rwandan genocide in 1994, and the almost unbelievable default in Srebrenica in Bosnia just a year later, in 1995.

Then the killing and ethnic cleansing started all over again in Kosovo in 1999. Not everyone, but certainly most people, and governments, accepted quite rapidly that external military intervention was the only way to stop it. But again the Security Council failed to act, this time in the face of a threatened veto by Russia (an unhappily familiar story again over the last three years, in the context of Syria, as I will come back to). The action that needed to be taken was eventually taken, by a coalition of the willing, but without the authority of the Security Council, thus challenging the integrity of the whole international security system (just as did the invasion of Iraq four years later in far less defensible circumstances).

There was at least real debate about these issues in the 1990s, but it was fierce, doctrinal and essentially ideological argument, producing nothing remotely resembling consensus. On the one hand, there were advocates, mostly in the global North, of "humanitarian intervention" – the doctrine that there was a "right to intervene" militarily, against the will of the government of the country in question, in these cases *("droit d'ingerence"* in the words of Bernard Kouchner, its primary advocate). On the other hand there were defenders of the traditional prerogatives of state sovereignty, who made the familiar case that internal events were none of the rest of the world's business.

It was very much a North-South debate, with the many new states born out of decolonization being very proud of their new won sovereignty, very conscious of their fragility, and all too conscious of the way in which they had been on the receiving end in the past of not very benign interventions from the imperial and colonial powers, and not very keen to acknowledge their right to do so again, whatever the circumstances. Hardly anyone talked about prevention or less extreme forms of engagement and intervention, and there was no system of international criminal justice to which anyone could resort. The options were "Send in the Marines" or do nothing. This was the environment which led Kofi Annan to issue his now famous challenge to the General Assembly in 2000:

> If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?

It was to answer that challenge, and try to build a new international political consensus, that the Canadian sponsored *International Commission on Intervention and State Sovereignty* (ICISS) of 2001, which I co-chaired with the distinguished African diplomat Mohamed Sahnoun, and which had an all-star international cast including former US Congressman Lee Hamilton, Russia's Vladimir Lukin, Asia's Fidel Ramos and Canada's Michael Ignatieff, and

which came up with the concept of "R2P". As subsequently refined, and endorsed by the UN General Assembly at the 2005 World Summit, the new doctrine had three key dimensions:

- its language, which re-characterized the issue as not being about the "right" of big states to throw their weight around militarily, but rather the "responsibility" of all states to act to protect their own and other peoples from mass atrocity crimes;
- its spreading of that responsibility: every state had the responsibility to protect its own people; other states had a responsibility to assist them to do so; and – if a state was manifestly failing, as a result of either incapacity or ill-will, to protect its own people – the wider international community then had a responsibility to act more decisively; and
- its broadening the range of appropriate responses. Whereas "humanitarian intervention" focused one-dimensionally on military reaction, R2P involves multiple elements across the response continuum: preventive action, both long and short term; reaction when prevention fails; and post-crisis rebuilding aimed again at prevention, this time of recurrence of the harm in question. The "reaction" element, moreover, was itself a nuanced continuum, beginning with persuasion, moving from there to non-military forms of coercion of varying degrees of intensity (like sanctions, or threat of international criminal prosecution), and only as an absolute last resort contemplating coercive military force.

Articulated this way, the new concept did gain remarkable international traction within a very short time, and in fact has had one of the fastest take-ups ever of any new idea to emerge in the global arena. Although its initial impact was dulled by the publication of the ICISS report shortly after 9/11, which took the air out of every international debate on anything other than terrorism, its supporters ground away, and after two further reports (by a High Level Panel appointed by the UN Secretary General, of which I was fortunate to be a member, and by Secretary-General Annan himself) R2P won unanimous endorsement by the more than 150 heads of state and government meeting as the UN General Assembly at the 2005 World Summit.

The language of the General Assembly resolution in 2005 described the reach of the concept in terms of what are now universally referred to as "four crimes" (genocide, war crimes, ethnic cleansing, and crimes against humanity) and three "pillars": Pillar One being the responsibility of each state to protect its own population from these crimes; Pillar Two being the responsibility of others in the international community to assist it to do so; and Pillar Three being the responsibility of the wider international community to respond in a "timely and decisive manner" and by all appropriate means (not excluding coercive military action, in accordance with the UN Charter) if this becomes necessary because the state in question is "manifestly failing" to protect its own people.

The period from 2005 to 2011 saw the gradual growth to maturity of what I think can be reasonably described as the new "norm". Conceptual arguments as to its precise scope and limits were largely resolved, with the help an excellent series of Secretary-General's reports written by his then Special Adviser on R2P, Ed Luck. Rear-guard political resistance to it fell right away (as evidenced by successive annual UN General Assembly debates on those Secretary-General's reports from 2009 onwards, about which I will say some more later). New institutional mechanisms and processes to facilitate its application gradually evolved, including recognition that military doctrine, rules of engagement and training needed

adaptation to operations that were different in character from both traditional warfighting and traditional peacekeeping. And it was being seen as increasingly relevant in practice – most obviously and importantly in Kenya in early 2008, when a diplomatic mission led by Kofi Annan under the auspices of both the UN and African Union, and explicitly invoking R2P, successfully defused what was rapidly deteriorating into a Rwanda-scale catastrophe.

A number of non-governmental organizations, including the New York-based Global Centre for the Responsibility to Protect, played an important part during this period, and still do – through their analysis, advocacy, workshops, conferences and training programs – in consolidating the understanding of the scope and limits of the new norm, and in promoting its effective implementation in practice, not least at the crucial prevention stage.

When in 2011 the UN Security Council authorised military action explicitly under the R2P banner, in the cases of Cote d'Ivoire and Libya, this was widely heralded as the coming of age of the new norm. Libya especially, at least at the outset, seemed a textbook example of exactly how R2P is supposed to work in practice, at the reaction stage, in the face of a rapidly unfolding mass atrocity situation. A condemnatory and sanctions-imposing resolution was first passed unanimously, and this was followed three weeks later – when it seemed clear to everyone that new atrocities were imminent – by the authorisation, with no dissenting voices, of military measures "to protect civilians and civilian populated areas under threat of attack". Acting under this authorization, NATO-led forces took immediate action, and the feared massacres in Benghazi and elsewhere did not eventuate.

But with the apparent maturity of R2P also came a mid-life crisis. As the days and weeks went on, the Western-led intervention came under fierce attack by the "BRICS" countries – Brazil, Russia, India, China and South Africa – for exceeding its narrow civilian protection mandate, and being content with nothing less than regime change, which was of course finally accomplished with the overthrow of Gaddafi in October that year.

Unhappily, that criticism translated into Security Council paralysis in responding to what rapidly became the even more alarming situation in Syria. From mid-2011, all the way through until September 2013, when the use of chemical weapons – the most extreme atrocity crime of all – did force the Security Council to act, it could agree on almost nothing at all: not only on the extreme step of military force (as to which there have been many good reasons not to act) but even on lesser coercive measures like targeted sanctions, an arms embargo, or referral to the International Criminal Court. The attitude seems to have been "give the P3 (US, UK and France) nothing because if you give them anything they will take everything".

The tensions that exploded in Syria in early 2011 were long in the making and never going to be easily containable. But a major opportunity to break the cycle of violence breeding violence was completely lost with the failure of the UN Security Council to even condemn the behaviour of the Assad regime, let alone take more robust measures, when it first became obvious that unarmed protestors were being savagely attacked. That gave the regime a sense of untouchability and impunity, leading to further repressive behaviour which energised a fight-back by opposition forces, helped by military defections and some external support, which spiralled quickly into the full-scale civil war we have been watching, with horror, unfold ever since.

What was needed in mid-2011 was not a Security Council decision mandating the use of coercive military force. The Syrian situation was then, and has remained since, very different from that in Libya, and the case for military intervention has always been very much harder to make: at every relevant stage, such action would almost certainly have resulted in more casualties, not less. But the case for a condemnatory *statement* was overwhelming, and had that been supplemented by the kind of measures that were initially applied in Libya – sanctions, an arms embargo, and threat of International Criminal Court prosecution – President Assad would certainly have been given cause for pause.

So what went wrong? There is an obvious answer, even if it continues to be met with denial and resistance by those who most need to accept it. And that is the perception by a large number of countries – led by the so-called "BRICS" (Brazil, Russia, India, China and South Africa) – that as the NATO-led intervention in Libya went on, the major Western powers overreached the civilian protection mandate they had been given by the Security Council by demanding, and achieving, nothing less than the complete destruction of the Gaddafi regime.

There was no problem at the outset, just as there was (and has remained since) no problem with the quickly concluded military action in Cote d'Ivoire at around the same time. In allowing Resolution 1973 of March 2011 to pass, authorising as it did "all necessary measures… to protect civilians and civilian populated areas under threat of attack", all members of the Council knew exactly what they were doing. The NATO-led airborne forces did precisely what they were expected to do, and the immediately-feared massacres in Benghazi and elsewhere did not eventuate.

The real complaints related to the days, weeks and months which followed, when it became very evident, from both their words and deeds, that the three permanent member states driving the intervention (the US, UK and France, or "P3") would settle for nothing less than regime change, and do whatever it took to achieve that. The charge sheet includes the interveners rejecting ceasefire offers that may have been serious, and which certainly should at least have been explored; striking fleeing personnel that posed no immediate risk to civilians; striking locations that had no obvious military significance (like the compound in which Gaddafi relatives were killed); and, more generally, comprehensively supporting the rebel side in what rapidly became a civil war, ignoring the very explicit arms embargo in the process.

The P3 continues to have some strong answers to these criticisms. If civilians were to be protected house-to-house in areas like Tripoli under Gaddafi's direct control, they say, that could only be by overturning his whole regime. If one side was taken in a civil war, it was because one-sided regime killing sometimes leads (as now in Syria) to civilians acquiring arms to fight back and recruiting army defectors. A more limited "monitor and swoop" concept of operations would have led to longer and messier conflict, politically impossible to sustain in the US and Europe, and likely to have produced many more civilian casualties.

While these arguments all have force, the trouble remains that the P3 resisted debate on them at any stage in the Security Council itself, and other Council members were never given sufficient information to enable them to be evaluated. Maybe not all the BRICS are to be believed when they say that, had better process been followed, more common ground could have been achieved: Russia's position on Syria was from the outset manifestly *realpolitik*-driven. But they can be believed when they say they feel bruised by the P3's

dismissiveness during the Libyan campaign – and that those bruises will have to heal before there will be any prospect at all of consensus on tough responses to such situations in the future.

The Future of R2P. Two big questions arise now as to the future of R2P in the light of these events, and now others as well creating new tensions within the P5. Has there been an irretrievable breakdown in the Security Council as to how to react to the hardest mass atrocity crime situations, such that consensus in these cases in the future is really unimaginable? And, more generally, has the whole R2P project been seriously, and perhaps irreversibly tarnished? I believe the answers to both these questions are in the negative, that R2P does indeed have a future, and that we are not headed back to the bad old days of the 1990s in this respect. Let me spend the remainder of this lecture giving you four big reasons why.

The first is that, whatever the difficulties being experienced in the Security Council, the underlying norm is in remarkably good shape in the wider international community. The best evidence of this is in the annual debates on R2P in the General Assembly, which continue to demonstrate that, even in the aftermath of the strong disagreements over Libya, there is effectively universal consensus on basic R2P principles. No state is now heard to disagree that every sovereign state has the responsibility, to the best of its ability, to protect its own peoples from genocide, ethnic cleansing, and other major crimes against humanity and war crimes. No state disagrees that others have the responsibility, to the best of their own ability, to assist it to do so. And no state seriously continues to challenge the principle that the wider international community should respond with timely and decisive collective action when a state is manifestly failing to meet its responsibility to protect its own people. Certainly there is less general comfort with this last pillar than the first two, and there will always be argument about what precise form action should take in a particular case, but the basic principles are not under challenge. In the most recent annual General Assembly debate on R2P in mid-September 2013, in which 68 countries – more than ever before – participated, there was overwhelming support for all the basic R2P principles;[1] and that support was repeated two weeks later in many strong leaders' statements in the general debate opening the new session.[2]

Second, there has been continued evolution of institutional preparedness, at the national, regional and global level, which is absolutely crucial if R2P is to move beyond rhetoric to effective practical implementation, particularly at the crucial stages of early prevention, and early reaction to warning signs of impending catastrophe. Particular effort is going into the creation of "focal points" within governments and intergovernmental organizations, namely high-level officials whose designated day-job it is to analyse mass-atrocity risk situations and to energise an appropriately swift and early response within their own systems and in cooperation with others. A particular initiative of Australia, Costa Rica. Denmark and Ghana to establish a global network of such focal points, has seen already 38 states signed up. Although in some cases cosmetics need to be matched by more substance, the reality is that from Uruguay to the United States, from the DRC to Cote d'Ivoire, from Lithuania to New

[1] Global Centre for the Responsibility to Protect, *"State Responsibility and Prevention": Summary of the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect held on 11 September 2013*: http://www.globalr2p.org/media/files/summary-of-the-2013-r2p-dialogue.pdf

[2] Global Centre for the Responsibility to Protect, *The Responsibility to Protect at the Opening of the 68th Session of the United Nations General Assembly*, 4 October 2013. http://www.globalr2p.org/media/files/2013-ga-quotes-summary-2.pdf

Zealand, there is a large and growing group of states building a real community of commitment.

The UN system has its own focal point with the Office of the Special Adviser on the Prevention of Genocide, attached to which is also a Special Adviser on R2P (although the latter position is regrettably now very much a part-time one and not based in New York). That has needed to be supplemented by a more whole hearted institutional commitment to making R2P work, especially in relation to effective early warning, and there are happily now some strong signs of that commitment being made with the Secretary-General's recently announced "Rights Up Front" initiative. Itself largely a response to the UN system's failure to act strongly and effectively in the face of the rapidly unfolding human rights crisis in Sri Lanka in 2009, this is focusing on a much stronger and more timely information flow within the UN system, and from the UN to member states, and better coordinated responses across the system. Reaction to the initiative from member states to date seems to have been strongly positive, contesting the notion still being advanced by some R2P critics that many states will never be sympathetic to the characterization of emerging human rights problems in R2P terms because of the slippery slide to ultimate military intervention that characterization is thought to entail.

The third reason for optimism about the longer term future of R2P is that the Security Council itself, for all the continuing neuralgia about the Libyan intervention and the impact of that in turn on Syria, has, since its March 2011 decisions on Cote d'Ivoire and Libya, endorsed twelve other resolutions directly referring to R2P, including measures to confront the threat of mass atrocities in Yemen, Libya, Mali, Sudan, South Sudan and the Central African Republic, and most recently in relation to the humanitarian response to the situation in Syria.[3] There were just four Security Council resolutions prior to Libya using specific R2P language, but there have been twelve since! While none of these have authorized a Libyan style military intervention, together they do confirm that the rumours of R2P's death in the Security Council have been greatly exaggerated. The kind of commitment that has been shown to supporting robust peacekeeping operations in Mali and Central African Republic in particular is very different to the kind of indifference which characterized the reaction to Rwanda and so many other cases before it.

Moreover, it is worth remembering, again in the specific context of Syria when the Security Council was confronted with unequivocal evidence of one specific mass atrocity crime, the chemical weapons attacks in Ghouta in August last year 2013, consensual action swiftly followed, authorising the destruction of the Syrian regime's chemical weapons and foreshadowing consideration of coercive action under Chapter VII of the UN Charter should it not cooperate. True, the decision was framed as a response to the proven use of an outlawed weapon of mass destruction, rather than a major war crime or crime against humanity breaching R2P principles. But what drove the decision was manifestly a unanimous sense of the total unconscionability, in this day and age, of this kind of indiscriminately inhumane action.

The fourth and last argument for optimism about the future of R2P I would make is that, for all the division and paralysis over Libya and Syria, it is possible to see the beginning of a new dynamic in the Security Council that would enable the consensus that matters most – how to

[3] For a full list of UN Security Council resolutions that reference R2P, see the Global Centre for the Responsibility to Protect: http://www.globalr2p.org/resources/335

react in the Council on the hardest of cases – to be re-created in the future. The ice was broken in this respect by Brazil in late 2011 with its proposal that that the idea be accepted of *supplementing* R2P, not replacing it, with a complementary set of principles and procedures which it has labelled "responsibility while protecting" or "RWP".

There were two core elements of the proposal. First, that there should be a set of prudential criteria fully debated and taken into account before the Security Council mandated any use of military force. And second, that there should be some kind of enhanced monitoring and review processes which would enable such mandates to be seriously debated by all Council members during their implementation phase, with a view to ensuring so far as possible that consensus is maintained throughout the course of an operation.

While the response of the P3 to the Brazilian proposal has so far remained highly sceptical, has become increasingly clear that if a breakthrough is to be achieved – with un-vetoed majorities once again being possible in the Council in support of Chapter VII-based interventions in extreme cases – they are going to have to be more accommodating. The incentive to do may be that that there have been intriguing signs that the two BRICS countries that matter most in this context, because of their veto-wielding powers, China and Russia, may be interested in pursuing these ideas further.

At a two-day meeting I attended in Beijing in October 2013, hosted by the foreign ministry's think tank, the China Institute of International Studies, which brought together specialist scholars and practitioners from China and the other BRICS countries (Brazil, Russia, India, and South Africa) together with a handful of Western specialists, strong support was expressed around the table for the principle of "Responsible Protection" (RP), which had been floated by the Chinese scholar Ruan Zongze in a 2012 journal article[4], which explicitly referred to and built upon the Brazilian RWP proposal, and which evidently had been the subject of much internal discussion since in Chinese policymaking circles. And then in the same month, the Diplomatic Academy of the Russian Ministry of Foreign Affairs, apparently on the initiative of Foreign Minister Lavrov himself, hosted a one-day meeting on R2P, evidently the first of its kind, attended by senior ministry officials and Russian academics and a handful of Western specialists. I am told that while a little less focused than the Beijing event, there was again much attention paid to RWP and the Chinese RP concept, and an emerging sense from the meeting that Russia needed to align itself with those views.[5]

Of course with the explosion now of concern about Russia's behaviour in Ukraine in recent days – combined with the cynicism that is bound to be generated, in an R2P context, by Moscow's claim to be acting in Crimea to protect its Russian nationals and language-speakers (albeit that we have not seen any crude reliance on R2P as such as we did in Georgia in 2008) – the atmosphere in the Security Council may not be very conducive, in the immediately foreseeable future, to winning consensus in a big-principles debate on anything to do with state sovereignty and the proper scope and limits of coercive intervention.

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[4]4 Ruan Zongze, 'Responsible Protection: Building a Safer World', CIIS, 15 June 2012: http://www.ciis.org.cn/english/2012-06/15/content_5090912.htm

[5] This account of the Beijing and Moscow meetings draws on Gareth Evans, 'Protecting Civilians Responsibly', Project Syndicate, 25 October 2013: http://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embrace-humanitarian-intervention

But I do believe that it is both highly desirable, and possible over time, if not immediately, to initiate some serious discussion within the Council – using informal processes in the first instance, which I very much hope that Australia can play a part in initiating during our remaining time on the Council – to put some detailed substance into the two elements highlighted in the original RWP proposal and repeated in the RP formulation.

The first is systematic attention to the relevant prudential criteria for the use of coercive military force, not yet formally adopted in any UN process but spelt out in the initial Commission report which introduced the Responsibility to Protect concept more than a decade ago[6] and very much part of the currency of international debate ever since, viz. *seriousness of harm involved, right intention, last resort, proportionality* and *balance of consequences*. It would not be necessary, and probably counterproductive to try, to formally adopt these five criteria in a formal Security Council or General Assembly resolution. Nor can it be argued that attention to these benchmarks will produce consensus with push-button consistency: life is never that easy. But there is plenty of reason to believe that if an understanding develops that those arguing a case for military intervention must in practice make a detailed and compelling case that all five criteria would be satisfied, the chances of reaching consensus – one way or the other – will be significantly improved.

The other element of a new process would require some kind of serious ongoing review of coercive mandates once granted. This is likely to be met with some resistance by the P3 on the grounds that there must be some flexibility in the implementation of any military mandate, and that military operations can never be micro-managed. These are not unreasonable concerns, but equally there is no reason in principle or practice why broad concepts of operations, as distinct from strategy or tactics, should not be regularly debated, and questioned as necessary. Whether civilian protection can be accomplished without full-scale war-fighting and regime-change is exactly such a question that the P3 should be prepared to debate. It is not necessarily a matter of establishing any new institutional mechanism – though sunset clauses, requiring formal renewal if a mission is to continue, are hardly unfamiliar in the Security Council. It is more a matter, again, of there being some real understanding that ongoing debate on mandate implementation is wholly legitimate.

One straw in the wind suggesting that there is at least some willingness within the P5 to move forward and find new consensus on R2P related issues is the French proposal, floated by French President Hollande in the General Assembly last October that the P5 members voluntarily agree to suspend their right to exercise a veto when exercising a vote on a mass atrocity crime situation reported to the Council and described as such by the Secretary-General. Initial reactions from other P5 members so far have not been very encouraging. Perhaps the problem is that they have taken to heart the nostrum of Australia's Prime Minister in the 1940s that "The trouble with gentleman's agreements is that there are not enough bloody gentlemen". But if ever the Security Council is to win back some of the respect and credibility that both its structure and behaviour have increasingly denied it, it is going to have to be through informal adjustments of this kind, and it is very much to be hoped that the move for veto self-denial in atrocity crime cases will gather real traction.

It is important to emphasise again, finally, that the disagreement now evident in the UN Security Council *is* really only about how the R2P norm is to be applied in the hardest, sharp-end cases, those where prevention has manifestly failed, and the harm to civilians being

[6] International Commission on Intervention and State Sovereignty, Gareth Evans and Mohamed Sahnoun (Co-Chairs), *The Responsibility to Protect* (Ottawa, IDRC, 2001): http://responsibilitytoprotect.org/ICISS%20Report.pdf

experienced or feared is so great that the issue of military force has to be given at least some prima facie consideration. There is much more to the R2P project than just these extreme late-stage situations, as I hope I have made clear, and much to indicate that its other preventive, reactive and rebuilding dimensions all have both wide and deep international support.

But of course these hardest cases *are* the talismanic cases, and if consensus has broken down irretrievably at the highest political level on how they should be handled, there is a danger of flow-on risk to the credibility of the whole R2P enterprise. After all that has been achieved in the last decade, that would be heartbreaking. It may be too big a call to say, as the British historian Martin Gilbert did a decade ago, that acceptance of the responsibility to protect is "the most significant adjustment to sovereignty in 360 years", but it's certainly true to say that R2P has gained worldwide normative traction in a way that was and remains inconceivable for the concept of "humanitarian intervention" which it sought to displace.

Congenital optimist that I am I really do believe policymakers now around the world do understand the stakes much better than they used to, that no-one really wants to see a return to the bad old days when appalling crimes against humanity committed behind sovereign state walls were seen by almost everyone as nobody else's business, and that the imperative for effective cooperation that our common humanity demands will eventually prevail. But if you think I have this completely wrong, no doubt you'll now tell me.

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